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Michigan Waste Industries Association
Testimony in Opposition to HB 5400, HB 5401 and HB5402
March 25, 2014

Good afternoon Madam Chair and Members of the Committee. My name is Dan Batts; I am President of Michigan Waste Industries Association (MWIA) on whose behalf I provide testimony today.

Thank you for allowing me to testify before you in opposition to HB 5400, HB 5401 and HB 5402 in their introduced form. We have been working with Michigan Manufacturing Association (MMA) since the Bills were introduced to seek to resolve the issues that cause our opposition. We have raised six issues with the proposed legislation:

- Enacting Section 1(2) of HB 5400 (page 75, line 23) would improperly rescind Rules 101 through 104 and Rule 106a of the Part 115 Rules (MAC 299.4101-.4104 and .4106a), which contain necessary definitions for over 90 terms that are used in Part 115 and the Part 115 Rules. While some of the definitions contained in the rescinded rules would be duplicative of new definitions contained in the Bills (e.g., the Part 115 Rules define the terms "*Agonomic Rate*" and "*Cement Kiln Dust*" which are also defined in the Bills), the significant majority of these definitions apply to terms that are unrelated to the subject matter of the Bills. Moreover, the precise meanings of many of these rescinded terms are vital to the implementation of the Part 115 program. For example the Bills would rescind the definitions of "*New Unit*," "*Existing Unit*," "*Preexisting Unit*," and "*Closed Unit*," which dictate the design and closure standards applicable to landfill units. Many of the rescinded terms do not have plain and ordinary meanings outside of the precise definitions currently contained in the Part 115 Rules. Enacting Section 1(2) should be revised to selectively rescind only duplicative definitions or, if that is not possible, the defined terms in the Bills should be revised to eliminate duplicative definitions such that the Rule definitions remain unchanged.
- Enacting Section 1(2) of HB 5400 (page 75, line 21) would improperly rescind Rule 119 of the Part 115 Rules (MAC 299.4119) concerning the management of "*source separated materials*" without replacing those management standards in Part 115. Among other things, Rule 119 currently prohibits storing *source separated materials* in a "manner constituting speculative accumulation," and mixing *source separated materials* "so that the waste materials cannot be converted into raw materials or new products without processing to remove the other material." If these existing management standards are rescinded from the Part 115 Rules, they should be restored in Part 115 itself.
- The Bills lack any funding mechanism that would offset the Department's expenses in administering the "*beneficial use byproduct*" and other programs created or expanded by the Bills. Applicants for Department approval of a new *beneficial use byproduct*, *source separated material*, *inert material*, or *low hazard industrial waste* should be required to pay a fee that is commensurate with the Department's expenses in reviewing and acting on those applications. In addition, large quantity generators and brokers of these materials should be required to annually register and pay a registration fee to offset the

Department's oversight costs related to administering Part 115 with respect to these materials.

- The analytical testing requirements applicable to *beneficial use byproducts* used as “*Beneficial Use 2*” (i.e., construction fill, road base, soil stabilizer, or road shoulder material) appear to be inadequate. As drafted, the Bills would require only a single analysis prior to the first use and would not require any subsequent analysis unless the process generating the materials changes. These materials, which would be placed on the ground in large quantities with minimal oversight, should be retested annually or, alternatively, the generator should certify annually that the generating process has not changed.
- The Bills would improperly absolve a person storing or using *beneficial use byproducts* from all liability under Part 201 for resulting environmental contamination. Under the Bills, the placement of the *beneficial use products* on the ground would ***not*** be considered a “*release*” (HB 5400, page 65, lines 20-22), any contamination resulting from that placement would ***not*** be considered a “*facility*” (HB 5400, page 59, lines 7-11), and any person responsible for causing such contamination would ***not*** be considered a “*person who is liable*” under Part 201 (HB 5401, page 3, lines 20-22). No other user of any other commercial product enjoys such a sweeping exemption from all Part 201 liability for environmental damage. Moreover, because existing Section 20142 of Part 201 (MCL 324.20142) provides that ***a person who “is exempt from liability under [Part 201] is not subject to a claim in law or equity for performance of response activities under part 17, part 31, or common law,”*** it appears there would be ***no*** recourse against any person that causes environmental contamination by storing or using *beneficial use byproducts*.
- HB 5400 would improperly authorize the Department to exclude ***any*** material from the definition of “solid waste,” and thus exclude that material from regulation under Part 115 (page 32, lines 22-25). There is no stated limit on what materials the Department could exclude from regulation, or the conditions for such exclusion. This provision would effectively delegate from the Legislature to the Department the authority to redefine the term “solid waste” under Part 115. This would be a significant expansion of the Department's authority under Part 115 with no legislative guidelines on how the Department should implement that authority.

Based on conversations over the last few days bullets one, two and six seem to be areas that we may be able to come to some agreement between MWIA and MMA while the other three bullets we have thus far agreed to disagree. MWIA is committed to working with all interested parties to seek possible amendments to the legislation that would facilitate our support of the legislation.

Thank you for allowing me to address the committee today, I am available for questions if needed.